

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 3163 – SB 3591

April 29, 2010

SUMMARY OF AMENDMENT (018058): Deletes all language of the original bill. Deletes effective date of March 28, 2011, when sole proprietors and partners engaged in the construction industry will be required to carry workers' compensation coverage on themselves and replaces it with March 1, 2011. Creates a procedure for sole proprietors, partners in a limited partnership or limited liability partnership, officers of corporations, and members of limited liability companies engaged in the construction industry to file for an exemption from obtaining workers' compensation insurance to cover themselves. Authorizes the Secretary of State to charge a maximum fee of \$100 for a construction services provider registration or renewal and \$100 for a construction services provider workers' compensation exemption. Creates the Workers' Compensation Employee Misclassification Education and Enforcement Fund (WCEMEEF). Requires that all money in the fund be allocated to the Secretary of State's office to administer the provisions of this bill as amended. Creates a taskforce to study issues relative to employee misclassification and workers' compensation. Terminates the taskforce on June 30, 2014. Beginning March 1, 2013 and each fiscal year thereafter, the taskforce shall make recommendations to the General Assembly regarding the allocation of any surplus in the WCEMEEF. Recommendations must include a minimum of 80 percent allocated to the Department of Labor and Workforce Development and the Board of Licensing Contractors. Authorizes further allocations to the Secretary of State.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue – \$150,000/General Fund

Decrease State Revenue –

\$46,600/FY10-11/General Fund

\$4,600/FY10-11/Tennessee Occupational Safety and Health Act
(TOSHA)

\$523,900/FY11-12 and Subsequent Years/General Fund

\$52,300/FY11-12 and Subsequent Years/TOSHA

Increase State Expenditures – \$212,400/One-Time/General Fund

\$246,400/Recurring/General Fund

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue –

**Net Impact – \$26,100/FY10-11/General Fund
\$2,300/Recurring/Earmarked for the Department of State
\$712,500/FY10-11 and biennially thereafter/ Workers’ Compensation
Employee Misclassification Education and Enforcement Fund
(WCEMEEF)**

Decrease State Revenue – Net Impact –

**\$4,600/FY10-11/Tennessee Occupational Safety and Health Act
(TOSHA)
\$451,200/FY11-12 and Subsequent Years/General Fund
\$52,300/FY11-12 and Subsequent Years/TOSHA**

Increase State Expenditures – \$188,600/One-Time/WCEMEEF

**\$17,800/Recurring/WCEMEEF
\$103,000/One-Time/General Fund
\$286,600/Recurring/General Fund**

Other Fiscal Impact – Beginning in FY13-14, recommendations for the allocation of any surplus in the WCEMEEF will be made by the taskforce. An amount of at least 80 percent of the surplus must be included in the recommendation as an allocation to the Department of Labor and Workforce Development and the Board of Licensing Contractors. In FY13-14 there will be a surplus of approximately \$1,156,300. In years following FY13-14 the biennial surplus will be in an amount up to \$676,900.

Assumptions applied to amendment:

- According to the Department of State, approximately 2,375 construction service providers do not have a license issued by the Board and will apply to be listed on the Workers Compensation Exemption Registry which will be valid for two years at a total fee of \$200 each. Approximately 2,375 do have a license issued by the Board and will apply to be listed on the Workers Compensation Exemption Registry at a total fee of \$100 each. The total increase to biennially recurring state revenue will be \$712,500 $[(2,375 \times \$100) + (2,375 \times \$200)]$.
- According to the Department of State, approximately 400 additional business entities would register with the Secretary of State every year. An increase to state revenue of \$75,000 from registration fees. Three percent (\$2,300) of fee revenue is allocated to the Department of State and 97 percent (\$72,700) is allocated to the General Fund.
- According to the Department of State, computer programming expenditures associated with this bill as amended will increase one-time state expenditures by \$188,600 $[(456 \text{ Business Analysis IT Pro hours} \times \$80.19 \text{ per hour}) + (1,520 \text{ Program Coding} \times \$100 \text{ per hour})]$.

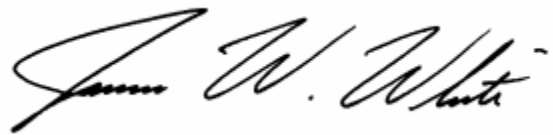
- An increase to recurring state expenditures of \$12,000 for printing, envelopes, and postage and a recurring increase to state expenditures of \$5,800 for Web services (\$480 per month). The total increase to recurring state expenditures will be \$17,800.
- A surplus is any amount that exceeds 1.5 times the amount used from the fund in the previous year. In FY12-13 and subsequent years, \$17,800 will be used by the Department of State to administer the provisions of this bill as amended. A surplus in FY13-14 and subsequent years will be any amount exceeding \$26,700 ($1.5 \times \$17,800$).
- The total revenue collected in the WCEMEEF from FY10-11 thru FY12-13 will be approximately \$1,425,000 (\$712,500 in FY10-11 + \$712,500 in FY12-13).
- Total expenditures from FY10-11 thru FY12-13 will be \$242,000 (\$188,600 one-time FY10-11 and \$17,800 recurring). The total amount remaining in the WCEMEEF at the beginning of FY13-14 will be approximately \$1,183,000 (\$1,425,000 - \$242,000). This will result in a surplus of approximately \$1,156,300 (\$1,183,000 - \$26,700) in FY13-14. In subsequent years, the biennial surplus will be approximately \$676,900.
- According to the Department of Labor and Workforce Development, the Department currently investigates 900 requests for investigations into workers' compensation premium deductions from wages.
- According to the Department of Labor and Workforce Development, one additional Workers' Compensation Specialist 4 position at a salary of \$57,500 and benefits of \$19,600, three Workers' Compensation Specialist 1 positions at a salary of \$35,000 and benefits of \$11,900 each (one in each grand division), and one Administrative Assistant 3 position at a salary of \$28,700 and benefits of \$9,800 will be needed in order to investigate the additional requests. Other recurring expenditures associated with five additional expenditures will be \$30,300. The total increase to recurring state expenditures will be \$286,600.
- One-time costs associated with the five new positions will be \$28,000 (office supplies and computer equipment).
- According to the Department of Labor and Workforce Development, there will be a one-time cost of \$75,000 for computer programming in order to create a program to receive applications and terminations of notices of election.
- Under current law, certain sole proprietors and partners engaged in the construction industry are not required to carry workers' compensation insurance until March 28, 2011. Beginning March 28, 2011 these workers would be required to carry workers' compensation insurance and pay premium taxes of four percent plus a 0.04 percent surcharge for TOSHA.
- Based on information provided by the Department of Commerce and Insurance, the exemption of individuals carrying workers' compensation insurance will result in a recurring decrease in state revenue of approximately \$700,000 beginning March 28, 2011. The total decrease in FY10-11 will be \$175,000; approximately \$15,900 is earmarked for TOSHA and \$159,100 is from the General Fund. The total decrease in FY11-12 and subsequent years is \$636,400 from the General Fund and \$63,600 from TOSHA.
- It is estimated that 500 additional policies will be purchased by individuals not eligible for exemption, on an average payroll of \$37,500 and an average policy rate of 15 percent will result in an increase to recurring state revenue of approximately \$123,800.

Approximately \$11,300 is earmarked for TOSHA and \$112,500 will be deposited into the General Fund.

- The net impact in FY10-11 will be an increase to state revenue of \$26,100 (\$112,500 + \$72,700 - \$159,100) to the General Fund and a decrease to state revenue of \$4,600 (\$15,900 - \$11,300) to TOSHA.
- The net impact in FY11-12 and subsequent years will be a \$451,200 (\$636,400 - \$112,500 - \$72,700) decrease to recurring state revenues in the General Fund and a decrease of \$52,300 (\$63,600 - \$11,300) to TOSHA.
- Any increase to state expenditures associated with the administration of the WCEMEEF or with the task force created in this bill as amended will be not significant.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

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